

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

In re:)
)
PHYSICIANS AND SURGEONS) Case No. 07-12967
HOSPITAL GROUP d/b/a TRI-LAKES) Chapter 11
MEDICAL CENTER,)
)
Debtor.)

**ORDER FOR DETERMINATION OF CLAIM OBJECTIONS
& FOR DISTRIBUTION OF ESCROWED FUNDS**

CAME ON before the Court for evidentiary hearing on August 28, 2009, the *Second Amended Omnibus Objection to Claims* filed by UPS CAPITAL BUSINESS CREDIT, a Connecticut chartered bank and trust company (“UPS Capital”), on July 8, 2009 (docket no. 1074)¹ (the “Claim Objection”), with regard to the claims asserted or which may be asserted herein by Panola County, Mississippi (“Panola County”), including the following claims filed by or on behalf of Panola County:

- (i) Claim No. 87-1 filed October 1, 2007, by David Garner, Tax Collector for Panola County (hereinafter, the “Tax Collector”), in the amount of \$319,754.67;²
- (ii) Claim No. 332-1 filed on October 1, 2007, by the Panola County Chancery Clerk (hereinafter, the “Chancery Clerk”);
- (iii) Claim No. 333-1 filed on October 1, 2007, by the Chancery Clerk;
- (iv) Claim No. 334-1 filed on October 1, 2007, by the Chancery Clerk;
- (v) Claim No. 382-1 filed on June 18, 2009, by the Chancery Clerk to amend Claim No. 333-1;

¹ UPS Capital initially filed its *Omnibus Objection to Claims* on June 9, 2009 (docket no. 1051), which it amended on June 10, 2009 (docket no. 1052), and then after certain additional claims were filed by Panola County, UPS Capital amended its omnibus claim objection again on July 7, 2009 (docket no. 1073). The Claim Objection (docket no. 1074) comprehensively addresses all claim objections of UPS Capital with regard to claims asserted by Panola County and supersedes the prior claim objections and amendments.

² The Panola County Chancery Clerk acknowledged in its *Amended Response to Objection to Claims* filed August 12, 2009 (docket no. 1139) that Claim No. 87-1 is a duplicate of Claim No. 333-1 and its subsequent Amended Claims Nos. 382-1 and 382-2.

- (vi) Claim No. 383-1 filed on June 18, 2009, by the Chancery Clerk to amend Claim No. 334-1;
- (vii) Claim No. 387-1 filed on June 22, 2009, by the Tax Collector;
- (viii) Claim No. 388-1 filed on June 22, 2009, by the Tax Collector;
- (ix) Claim No. 389-1 filed on June 22, 2009, by the Tax Collector;
- (x) Claim No. 390-1 filed on June 22, 2009, by the Tax Collector;
- (xi) Claim No. 391-1 filed on June 22, 2009, by the Tax Collector;
- (xii) Claim No. 386-1 filed on June 25, 2009, by the Chancery Clerk;
- (xiii) Claim No. 382-2 filed on June 25, 2009, by the Chancery Clerk;
- (xiv) Claim No. 383-2 filed on June 25, 2009, by the Chancery Clerk; and
- (xv) Claim No. 395 filed on August 11, 2009, by the Chancery Clerk.

The Court also considered the *Amended Response to Objection to Claims* filed on August 12, 2009, by Panola County (docket no. 1139), *UPS Capital's Post-Trial Brief In Support of Its Objection to Claims* filed on September 18, 2009 (docket no. 1278), the *Taxing Authorities' Memorandum Brief* filed on September 25, 2009 (docket no. 1293), as well as the evidence and arguments at the evidentiary hearing. The Court makes the following findings of fact and conclusions of law:

1. Robert S. Corkern, M.D., entered into a Purchase and Sale Agreement dated June 3, 2005 (the "Purchase Agreement") for the purchase of Tri-Lakes Medical Center (the "Hospital") from Panola County and the City of Batesville, Mississippi.
2. Section 7.15 of the Purchase Agreement provides that, beginning in 2006, the purchaser will pay taxes on the Hospital, including city, county, school and other taxes assessed on owners of commercial personal and real property in general.

3. Dr. Corkern assigned his rights and obligations under the Purchase Agreement to Physicians and Surgeons Hospital Group, a Mississippi non-profit corporation (the “Debtor”), pursuant to a certain Assignment and Assumption Agreement dated November 11, 2005.

4. Section 1 of the Assignment and Assumption Agreement provides that the Debtor agrees to pay all of the liabilities of Dr. Corkern in connection with the Purchase Agreement, including but not limited to the requirements of Section 7.15 of the Purchase Agreement regarding the payment of taxes.

5. Hospitals which meet the requirements of Mississippi Statute Section 27-31-1(f) are entitled to an exemption from ad valorem taxes.

6. The Debtor did not pay ad valorem real property taxes for the Hospital in 2006, 2007, 2008 or 2009, and did not pay personal property taxes in 2007, 2008 or 2009.

7. The Debtor filed for Chapter 11 bankruptcy on August 23, 2007 (the “Filing Date”).

8. As demonstrated by its *Proof of Claim* filed herein (claim #9), UPS Capital is a secured creditor of Debtor in excess of \$27.5 million as of the Filing Date. As security for its claim UPS Capital has, among other collateral, a first mortgage upon the two parcels of real estate comprising the Hospital and a first priority security interest in all personal property owned by the Debtor.

9. Pursuant to that *Order* filed December 26, 2007 (docket no. 253), the Debtor’s troubled management was replaced effective December 3, 2007, with a professional turnaround manager specializing in healthcare reorganization, Michael Morgan of Healthcare Management Partners, LLC.

10. The Hospital was sold pursuant to the Court’s *Order Granting Second Amended Motion to Sell...* filed August 24, 2009 (docket no. 1189) to Alliance Health Partners for \$14

million, which sale was closed on August 31, 2009 (the “Sale Date”). Pursuant to the Court’s *Order* filed September 4, 2009 (docket #1223), \$1.95 million was escrowed (in an interest bearing escrow account) (hereinafter, the “Escrowed Funds”) from the sale proceeds pending a resolution of the dispute between UPS Capital and Panola County over the validity and relative priority of the claims asserted by Panola County with respect to the first mortgage and security interest of UPS Capital.

11. The testimony of Michael Morgan at trial demonstrated, and the Court so finds, that after his appointment and continuing to the Sale Date the Hospital met the requirements of Mississippi Statute Section 27-31-1(f) for exemption from ad valorem taxes.

12. Panola County has and is hereby allowed a valid priority claim for taxes due for 2006 and 2007 in the total amount of \$992,180.99, which is secured by the Escrowed Funds and which has priority over the claim of UPS Capital therein and which shall be paid from the Escrowed Funds as ordered below, with the remainder of the Escrowed Funds to be paid to UPS Capital.

13. Because the Debtor was exempt from taxes from December 3, 2007, through the Sale Date, Panola County has and is hereby allowed a general unsecured claim against the Debtor for all other amounts Panola County claims or may claim for taxes, including 2009.

IT IS THEREFORE ORDERED that the Claim Objection is granted in part and denied in part; that the Escrowed Funds shall be distributed by the Debtor as soon as reasonably possible after the filing of this Order; that from the Escrowed Funds the Debtor will pay Panola County \$992,180.99 in full satisfaction of Panola County’s priority claims; that the Debtor will pay all remaining Escrowed Funds (including any interest earned thereon) to UPS Capital; and that Panola County shall have a general unsecured claim for the balance it claims due for taxes through the Sale Date.

Dated: October ___, 2009.

Hon. David Houston
United States Bankruptcy Judge

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